

**THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204**

**STATE OF INDIANA)
) SS
COUNTY OF MARION)**

**EVERETT BLACKMON, JR.,
Complainant,**

DOCKET NO. 02704

v.

**STATE OF INDIANA DIVISION
OF PERSONNEL AND STATE OF INDIANA
DEPARTMENT OF CORRECTION,
Respondent.**

ORDER

Comes now the Indiana Civil Rights Commission and finds and rules as follows:

The Recommended Finding of Fact, Conclusions of Law, and Order of the Hearing Officer are adopted as the Final Order in the above entitled matter.

The Findings of Fact, Conclusions of Law and Order of the Hearing Officer are hereby incorporated by reference and attached to this order.

Dated: November 29, 1980

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RECOMMENDED FINDINGS OF FACT, CONCLUSION OF LAW, AND ORDER

The above-captioned claim was the subject of an administrative hearing on October 3 and October 24, 1979, in the rooms of the Indiana Civil Rights Commission before R. Davy Eaglesfield, III, Hearing Officer.

Complainant was represented by Alice Craft and respondent was represented by David L. Steiner. Having considered the record, the evidence adduced at hearing, the arguments of counsel and the Complainant, the applicable law and being duly advised in the premises the Hearing Officer hereby enters the following Recommended Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. The Complainant, Everett Blackmon, Jr., a black male, was an employee of the Respondent, Department of Correction, on July 31, 1972 and had been employed by the Respondent since December 8, 1969, as a Corrections Officer.
2. On July 31, 1972, Complainant was employed as a Corrections Officer III at a bi-weekly salary of \$266.00.

3. On July 20, 1972, the Complainant filed the complaint which is the subject of this action. In his complaint, he charges he was denied a job transfer to the position of parole investigator or transportation officer.
4. On August 13, 1971, Complainant applied to State Personnel to take the test for Parole Investigator. He took the test on August 25, 1971, and passed the test with a score of 92.
5. Complainant notified the Personnel Director of D.O.C. and the Supervisor of Parole of his passing the test, his score, and under the practice at that time properly applied for the position.
6. On July 6, 1972, a notice was posted for a vacancy for Parole Investigator. Complainant properly inquired and applied for this position.
7. The evidence disclosed that the defendant was considered for this position by the Parole Division of D.O.C. and that W.C. Elsbury, the Director of the Youth Corrections Center, where Complainant was employed as a corrections officer, was asked for his recommendation concerning Complainant's transfer as a parole investigator.
8. The evidence disclosed that the position of Parole Investigator involved the transporting of parole violators back to Indiana from other states. One of the requirements of the job was the ability to get along with other people, including supervisor, fellow workers, law enforcement officers, and prisoners.
9. Respondent's Exhibits 7,8,9,10 and 11, all of which were a part of Complainant's personnel file, and known to W.C. Elsbury at the time of his recommendation disclose that Complainant demonstrated an inability to get along with and cooperate with other people.
10. Based upon this information, W.C. Elsbury recommended against Complainant being transferred to Parole Investigator.
11. It was also testified to that a representative of the D.O.C., especially one who has public contact in his job, should not be writing checks that are not good.
12. While the record only discloses one instance of Complainant issuing checks without sufficient funds prior to July, 1972, the evidence disclosed at least three other instances after that date.

13. Based upon the evidence in the record, Complainant was not qualified for the position of Parole Investigator.

14. There is evidence, however, that the D.O.C. wrongfully utilized racial considerations in its employment of Parole Investigators.

15. Complainant applied for the position of Parole Investigator in July of 1973. At that time, he was interviewed by Mr. Downing, Mr. Tyler, Mr. Day and Mr. Rea. of the D.O.C. The evidence is clear that Complainant was told that the job was dangerous for a black person because he would have to deal with people in small southern communities.

16. The evidence does indicate that at least in 1973 race was considered for the job of Parole Investigator.

17. The evidence also demonstrates tat because Complainant was unqualified for the position of Parole Investigator he would not have received the job in July 1972, even if race was not a consideration by the D.O.C. in filling the vacancy of Parole Investigator.

18. There is no evidence that Complainant filed any charge about his July 1973 rejection for the position of Parole Investigator.

19. The D.O.C. had a legitimate business reason for not transferring to and hiring Complainant in the Parole Investigator vacancy in July 1972.

20. On July 31, 1972, the D.O.C. hired Walter Smith as Parole Investigator at a salary of \$254.00 bi-weekly. He is a white male.

21. The D.O.C. has engaged in an unlawful discriminatory practice, in that it, at least in July 1973, utilized racial considerations in considering applicants for the position of Parole Investigator.

22. Any Conclusions of Law which should have been deemed a Finding of Fact are hereby adapted as such.

CONCLUSIONS OF LAW

1. The Department of Correction is an employer as defined in IC 22-9-1-3(h).
2. The Department of Correction is a "person" as defined in IC 22-9-1-3(a).
3. Complainant is a person.
4. The Complaint was timely filed under IC 22-9-1-3(c).
5. The Commission has jurisdiction over the subject matter and the parties.
6. The Department of Corrections denied Complainant a transfer to the position of Parole Investigator in July, 1972, because he was unqualified for the position.
7. The Department of Corrections in July 1973, engaged in an unlawful discriminatory practice by considering race for the position of Parole Investigator.
8. Any Finding of Fact which should have been deemed a Conclusion of Law is hereby adapted as such.

ORDER

1. The Complainant, Everett Blackmon shall take nothing by way of his complaint.
2. The Department of Correction shall cease and desist from utilizing racial consideration in the future employment of Parole Investigators or Transportation Officers.
3. Respondent Department of Corrections shall actively recruit, hire, and promote qualified employees for vacancies in the position of Parole Investigator without regard to race, religion, color, sex, national origin or ancestry, or handicap of the individual.
4. Respondent shall notify in writing, all personnel who participate in the selection of Parole Investigators of the policy enumerated in Paragraph 3 above. This notice shall make it clear to the personnel that any deviation from this policy will be cause for disciplinary action including possible suspension or discharge.

5. Respondent shall post and maintain on this bulletin boards normally used to disseminate employee information a bold-print statement of policy on equal employment. Such statement will include the following:

It is the policy of the Department of Corrections to take affirmative action to provide equal employment opportunity to all individuals regardless of their race. This equal employment opportunity refers to all applicable department practices including employee recruiting, hiring, transferring, training, promoting, disciplining, terminating and all other conditions or privileges of employment.

The selection of persons for positions at the Department of Corrections is to be based on the qualifications and abilities required to do the job.

Further, it is the policy of the Department of Corrections to expand and increase efforts of the department to promote the realization of equal employment opportunity throughout all its operations through a positive and continuing program.

6. Respondent agrees to report in writing to the Indiana Civil Rights Commission when the undertakings outlined in the above paragraphs of this Order have been accomplished. The report will describe the manner in which the undertakings were carried out and include copies of documents required by this Order. This report shall be submitted not later than sixty (60) days from the effective date of this Order.

7. Respondent shall submit to the Indiana Civil Rights Commission, at the end of twelve (12) months from the signing of this Order by the Commissioners, and again at the end of each twelve (12) months period thereafter for the duration of this Order, a written report which shall include:

A. A complete list of all openings for the position of Parole Investigator, which have occurred during the preceding twelve (12) months, If no such openings have occurred, a written statement to that effect will satisfy the requirements of this provision.

B. A complete list of all persons who have been certified by the Division of Personnel as eligible for employment as Parole Investigator during the preceding twelve (12) months along with indication of race, test score, and disposition of the application for each.

C. A complete list of all postings, advertisement, agencies, and any other media or sources utilized in recruiting or soliciting applicants for employment as Parole Investigator during the preceding twelve (12) months, along with samples of the advertisements, posting and other documents.

D. Such additional items as may be requested by the Commission and which are reasonable necessary for clarification of the above items and assurance of compliance with this Order.

8. Three years from the date this Order is signed, Respondent may move to dissolve this Order. If the Director of the Commission objects within thirty (30) days of the notice of the motion, the Commission shall conduct a hearing to determine whether the motion should be granted. If the Director of the Commission fails to interpose any objections within thirty (30) days the Order shall be dissolved without a hearing or further Order of the Commission.

Dated: October 31, 1979